would only relate back to a certain limited time, and, after that period, the creditor who had seized would be protected. The creditor would in England also after a time I think obtain a somewhat similar protection.

By adopting the views I have set out above, we are able to act on the ordinary meaning of the words of the Ordinance; I think too it is clear, that when section 4 of the Bankruptcy Ordinance 1888 was amended, by making mere seizure an act of Bankruptcy, this was done with the intention of benefiting the general body of creditors, and if the Ordinance is construed as I think it should be, there can be no doubt the general body of creditors will be benefited. Then it was foreseen I think, that the result of the alteration of the law would be, that individual creditors would suffer, and accordingly the new section 4 of section 44 was passed by the Bankruptcy Amendment Ordinance 1896, to provide some compensation. As then I think the Legislature when the Amending Ordinance of 1896 was passed intended to confer a benefit on the general body of creditors, and foresaw that individual creditors would sometimes suffer, I see nothing to justify us in departing from the ordinary meaning of the words used in the Ordinance. We cannot I think have any right to say, no doubt the Legislature did intend to benefit the general body of creditors, but not to the extent effected by the words used if read in their ordinary meaning, or to say, no doubt the Legislature foresaw that individual creditors would sometimes be damnified, but they cannot have foreseen that a creditor under the circumstances and in the position of the creditor in this case, would be affected.

I do not think the result arrived at by construing the Ordinance in the way I propose can be said to be either so absurd or so certainly contrary to the manifest intention of the Legislature, that we would be justified in construing the Ordinance in any way other than one similar to that in which the law was construed in *Figg* v. *Moore*. I may add that I think the passages to which we were referred, in *River Wear Commissinoers* v. *Adamson*, L. R. 2 App. Cases at p.764, and in *Ex parte Walton, In re Lewis*, L. R. 17 Ch. Div. at pp.750 and 751, tend rather to confirm the view I have adopted than the contrary.

In my opinion for the reasons which I have given, the order made in the Court below must stand, and this appeal should be dismissed.

Appeal Dismissed.

Solicitors for Appellants—*Braddell Bros.*

Solicitors for Respondent—*Sisson & Delay.*

[ORIGINAL CIVIL JURISDICTION]

WHITLEY, J.

October 6, 1924.

[APPELLATE CIVIL JURISDICTION]

SHAW, C.J., BARETT-LENNARD & DEANE, JJ.

February 26, 1925.

RE CHOPS LOH BAN CHUAN & CHUAN BEE *EX PARTE* LIM ENG HOE

[PENANG BANKRUPTCY No. 45 of 1924]

Ordinance No. 44 (Bankruptcy)—Order to show cause under Sec. 114(c) — Procedure necessary to lead to order for committal.

Held (i) upon an order to show cause under section 114(c) of Ordinance No. 44 (Bankruptcy) why he should not be committed to prison the debtor is entitled to have the charge against him put into writing and to be represented by Counsel.

Also Held (Deane, J. dissenting) that a Judge cannot act *ex proprio motu* under the section but an application should be made to the Court on motion as provided for in the Bankruptcy Rules. Section 114 of Ordinance No. 44 (Bankruptcy) is a highly penal provision and must be construed as strictly as its language justifies in the interest of the debtor.

Khoo Seok Wan v. *Sarkies & Johannes*, 11 S.S.L.R. 19 and *Re Chua Yew Chip, Chop Ho Lee, Exp. Chop Sim Tye*, Bankruptcy No. 23/01 discussed.

Appeal from an order of Whitley, J., committing the bankrupt to prison for one month.

The bankrupt was unrepresented before the Court of first instance.

The Judgment of M. H. Whitley, J., was as follows:—

WHITLEY, J.—The appellant was adjudicated bankrupt on the 18th August, 1924. Up to that time he had been carrying on business both as a druggist and tobacconist. The public examination was commenced on the 12th September. In adjourning it to the 15th September I warned appellant that I should probably call on him to shew cause why he should not be committed to prison for having contracted debts without having any reasonable ground of expectation of being able to pay them. The public examination was concluded on the 15th September and I at once called upon him to shew cause. In doing so I intimated that the particular debts which I had in mind were those incurred to Indian moneylenders during the period between the month of February, 1924, and the adjudication order. I referred to a list put to him in the course of the public examination by the Assistant Official Assignee and admitted in evidence as Exhibit "A."

I roughly totalled the fresh liabilities appearing on the list, as distinct from the old liabilities renewed, and pointed out to him that, when the more recent in date of these debts were contracted, he could hardly have had any expectation of ever discharging them. The following table shews

approximately the dates and amounts of these fresh liabilities:—

Month		Amount
February, 1924	..	$3,875.00
March „	..	3,845.00
April „	..	8,370.00
May „	..	3,700.00
June „	..	800.00
July „	..	300.00

Appellant gave two reasons why he was justified in thinking that he would be able to repay these debts.

The first was that he had two well-to-do uncles from whom he expected to receive legacies and the second was that he had hoped his shares in "The Criterion Press, Limited" would rise in value. These are about 1,000 shares of the nominal value of $10.00 each, now valued at $5.00 each. They had been deposited as security for loans. No ground was shewn for the hope that these shares might appreciate.

During the public examination Appellant said that he hoped to make a profit from his business. The facts are these. He admitted that he had been insolvent for ten years before his bankruptcy, with a constantly increasing deficiency. His statement of affairs shews unsecured debts $50,744.43 —assets $2,912.09 and deficiency $47,832.34. The assets, of course, included his total stock-in-trade, shop fittings and good book debts. If the large sums borrowed during the six months immediately preceding the bankruptcy were put into the business, the ultimate position proves how utterly unreasonable it would have been to suppose that they could be repaid from profits. If they were not put into the business, it is difficult to resist the conclusion that Appellant intended never to repay them.

Taking all these facts into consideration I was convinced that the loans from Indian money-lenders during the months of April, May, June and July, 1924, were contracted by Appellant without his having any reasonable ground of expectation of being able to repay them: and I therefore made the order committing him to prison.

The appeal came on for hearing before the Penang Court of Appeal—(Shaw, C.J., Barrett-Lennard, J. & Deane, J.)

Saunders (*Nelson* with him) for the appellant.

Mudie, D.P.P. for the respondent.

Cur. Ad. Vult.

SHAW, C.J.—This is an appeal from an order of the Judge sitting in Bankruptcy committing the debtor to one month's imprisonment on the ground that he had contracted debts provable in bankruptcy without having any reasonable ground of expectation of being able to pay them.

At the end of the debtor's public examination the Judge purporting to act under section 114 of the Bankruptcy Ordinance, called upon him to show cause why he should not be committed to prison, informing him verbally that the debts in respect of which he was called upon to show cause were the debts, some twenty five in number, incurred to Chetties subsequent to February, 1924. The debtor, being unable to shew cause to the satisfaction of the Judge, was summarily committed to prison for a period of one month.

Several objections were taken on the appeal to the Judge's order but I will only deal with one of them which appears to me to conclude the matter.

The Judge acted on the *obiter dicta* of the Judges constituting the Appeal Court in the case of *Khoo Seok Wan* v. *Sarkies and Johannes*, 11 S.S.L.R. 19 to the effect that the Judge sitting in bankruptcy was entitled at the conclusion of the public examination of the debtor, *ex proprio motu*, to summarily commit the debtor for offences against the provisions of the section.

The point did not arise in the case and was not argued by Counsel. The only matter before the Court was as to the admission of certain evidence on a motion by the Official Assignee for the committal of a debtor for an offence against the section, and the origin of the expression of opinions by the Judges appears to have been another *obiter dictum* of Sir William Hyndam Jones in a case *Re Chua Yew Chip, Chop Ho Lee, Ex parte Chop Sim Tye*, Bankruptcy No. 23 of 1901. That also was a case where a motion to commit was made by the Official Assignee and where the point now under consideration did not arise.

We have been referred to no case in which the question whether the Judge has power under the section to commit the debtor summarily on the conclusion of the public examination has has arisen, and in all the cases which were cited, including the subsequent cases of *re Mohamed Madar Sahib*, 12 S.S.L.R. 10, and *re Sarkies Johannes & Co.*, 12 S.S.L.R. 37, the proceedings in respect of offences against the section were on motion by the Official Assignee subsequent to the public examination.

I am clearly of opinion that we are not precluded by authority from consideration of the point now before Court.

With the greatest regard to the opinions of the Judges in the two cases first cited I am clearly of opinion that the Judge has no power given him by the section to commit the debtor summarily on the conclusion of the public examination.

Section 114 of the Bankruptcy Ordinance is a highly penal provision and renders punishable as criminal offences acts which are not known as such to the English law.

The section must therefore be construed, as strictly as its language justifies, in the interest of the debtor.

The words of the section are as follows:—

> "At any time after the public examination of the debtor a Judge may, if he thinks fit, order the bankrupt to undergo punishment of either description for a term which may extend to three months, if it appears to him that the bankrupt, etc., etc."

It is to be noted that the section says "at any time after the public examination," not "on the occasion of" or "at the conclusion of such examination." Also that the words are "A Judge may," not "the Judge may," clearly showing that the power to punish under the section is not confined to the Judge before whom the public examination is conducted.

Under the ordinary provisions of our penal law a person accused of an offence is entitled to have the charge against him put into writing so that he may know exactly what he has to meet. He is also entitled, if he so desires, to be represented by Counsel. Under the peculiar provision of our Bankruptcy Ordinance a debtor is debarred from having the assistance of Counsel at his public examination.

The only cases I know of in which a Judge is authorised to punish summarily for an offence is in the case of a contempt of Court, committed in the face of the Court, and the provision contained in the section 11 of Ordinance No. 48 (Oaths) relating to summary punishment in the case of perjury before the Court.

In this latter case however the provision expressly says that the committal may be "summarily" and "as for a contempt of Court"

No provision in any way similar to this is contained in the section of the Bankruptcy Ordinance under consideration.

In view of the expressions of opinion of the Judges in the cases I have referred to, the Judge of first instance could hardly have come to any other conclusion than that it was correct for him to proceed in the manner in which he did, but to construe the section so contrary to the ordinary principles of criminal justice so well established by the English law would be quite unjustifiable unless the wording of the provision renders it imperative, which it certainly does not.

In my view the section clearly contemplates an application to the Court on motion as provided for in the Bankruptcy rules when the debtor would have the charges he has to meet definitely stated in writing and would have the opportunity of being represented by Counsel and of adducing evidence in his defence. In my opinion the proceedings were wholly irregular and the appeal must consequently be allowed.

The decision I have come to on this point renders it unnecessary for me to go into the merits of the case and it is undesirable that I should do so since it is quite possible that, had a proper charge been made and proceeded with on motion, the debtor might have been able to place a very different construction of his acts before the Court.

BARRETT-LENNARD, J.—This is an appeal by Lim Eng Hoe against an order made by Whitley, J., on the 15th of September, 1924, committing him to prison, pursuant to section 114 of Ordinance No. 44, for having contracted debts provable in bankruptcy without having any reasonable expectation of being able to pay them.

The order was made *ex proprio motu*, a procedure which Hyndman Jones, C.J., in the case of *Re Chua Yew Chip, Chop Ho Lee*, and Braddell, J., in *Re Khoo Seok Wan*, (11 S.S. Law Reports at pp. 25, 26 and 27), appear to think warranted by the language of the enactment quoted. The Chief Justice said: "It would seem that it is not strictly necessary, in order to vest in the Judge the power of imposing on the bankrupt the appropriate punishment, that there should be even an application on the part of the Official Assignee or the petitioning or other creditor: but that the Judge may *ex proprio motu* order a bankrupt to be imprisoned, on its appearing from the public examination or otherwise that he has so acted as to bring himself within the section. I do not wish it to be taken that in my opinion such a course would be desirable." Braddell, J., said: "I entertain, I must confess, some doubt as to whether this section was intended to be acted upon in any other way than by the Judge acting *ex proprio motu* at the conclusion of the public examination." I am satisfied that the language of these two judges was simply *obiter dicta* and that we are at liberty to construe section 114 in conformity with what may be thought to be the general or particular policy of our law, subject always, of course, to giving full effect to the statutory words.

Now, my first proposition is that according to the usages of our Courts no man can be deprived of his liberty unless he has received (a) a precisely worded written notice or charge (b) adequate time within which to prepare his defence, (c) sworn or other recognised evidence in support of the notice or charge, and (d) an opportunity of presenting his defence through an advocate. If debtors may be committed at the close of their public examinations they are deprived of all these safeguards. I dwell particularly upon the inability of a man accused by a Judge to cross-examine him.

My second proposition is that, according to the policy of our law, a Judge ought not to unite with his own office that of a prosecutor. There are two exceptions to this rule.

(1) If any person is so wanting in good sense or proper feeling as to scandalise a Judge, he is entitled to strike at once: see *Watt* v. *Ligertwood* (L.R. 2 H.L.

(Sc) 361). But even in so extreme a case the general practice in England and in first class Possessions of the Crown is for one of the Law Officers to undertake the duty of accuser. Thus, when Mr. Gray, the editor of the Birmingham Daily Argus, wrote an article which was described as personal scurrilous abuse of Mr. Justice Darling as Judge, Sir Richard Webster applied, on the Crown side of the Queen's Bench Division, for an order calling upon Mr. Gray to answer for his contempt before a Bench which did not include the affronted Judge. The case is reported in (1900) 2 Q.B.D. at p. 36. No better illustration can be given of the politic reluctance shewn by the Judges with regard to the making of accusations.

(2) Section 11 (1) of Ordinance No. 48 empowers the Supreme Court to "summarily" commit a perjured witness as for contempt. I have no doubt that this authority has been conferred in order to vividly teach some people the consequences attending perjury. In England the Judge always impounds relevant documents and sends them with an extract from his notes and his opinion to the Director of Public Prosecutions.

My third proposition is that a public examination can only be regarded as an enquiry with reference to the property, conduct and dealings of the debtor and can finally determine nothing. The debtor's answers can be read against him on the hearing of subsequent motions in the same bankruptcy: but he can always file or otherwise give additional or explanatory evidence. It is a complete fallacy to suppose that he is on trial during the course of the public examination. His situation is peculiarly defenceless, since the examination commonly extends to all matters which the Court may take into consideration on the application for his discharge: and he has no advocate. I think that, in view of the position of the debtor during his public examination, it is of primary importance that, subject to any decisive direction from the Legislature he should not be sent to prison, or otherwise injuriously affected, simply on account of what he may then say: see *In re Cronmire*, (1 Manson 79).

I turn to section 114 of Ordinance No. 44 and am unable to find a trace of the implication which presented itself to the minds of Hyndman Jones, C.J., and Braddell, J. There is not one word which purports to oust the ordinary bankruptcy procedure by motion. Whitley, J., preferred the *obiter dicta* to the actual decision in *Re Khoo Seok Wan*. The explanation, no doubt, is that he felt much respect for the opinions of the two distinguished Judges named and may have known that it has been the custom to treat them as correct. We do not know as a fact that he had the decisions or *dicta* in mind, but naturally assume that he must have read them. I was, however, unaware that such *dicta* existed although so much of the Malayan bankruptcy business has fallen to me during the years of my actual residence in Singapore. I have always regarded a motion on the part of the Official Assignee as essential.

For the reasons given I am of opinion that we are not authorised by section 114 to act *ex proprio motu*. On this ground alone I am in favour of allowing the appeal. But there are other reasons for the adoption of this course.

I observe that one of the grounds of appeal is that the charge, (the nature of which the appellant could gather upon hearing the Judge and reading exhibit "A"), was too wide and general and that the appellant should have been called upon only to deal with specific and specified debts. The debts, in respect of which the offence was supposed to have been committed, were those incurred to Indian money-lenders during the period between February and August, 1924. The number was about twenty-five. The practice of the Courts in England under section 26 (3) (d) of the Bankruptcy Act 1914, has been, and is, to require the debts, which are alleged to have been contracted without reasonable expectation of being able to pay them, to be specified so that the Court may apply its mind to all the circumstances under which they were contracted. And it is not enough to shew that the debtor has contracted in the aggregate a greater amount of debts than he could reasonably expect to pay: see *In re Marks*, (L.R. 1 Ch. 334), *In re Caldwell*, (L. R. 3 Ch. 26), and *In re Ainsworth*, (L.R. 3 Ch. 244). It is clear that Whitley, J., had not these authorities present to his mind and unconsciously deviated from them. Therefore, if I had agreed that a Judge can act *ex proprio motu*, I should yet have said that the order of the 15th of September could not stand. I am further of opinion that to charge a man of the type generally brought before us for his public examination with the commission of twenty-five offences against section 114 is apt to be embarrassing. The Judge, of course, would never have proceeded with so many charges had he remembered the rulings to which I have just referred.

There is one rather small point which nevertheless might, by itself, have been sufficient to vitiate the order of the 15th of September. I can find no memorandum by the debtor that the notes of his public examination were read over and explained to him and were correct. The rules and forms must be mastered: for a Court will always lean strongly in favour of a debtor if there be any slip in procedure. After all the results here of bankruptcy are very serious and

it is the duty of the Courts to be excessively strict.

It only remains to say that so wanting in precision was the proceeding on appeal that the Assistant Official Assignee evidently thought that he was the respondent. He was nothing of the sort. The learned Judge was the only possible respondent and, without any instructions from him, ought to be represented by the Attorney General. The Deputy Public Prosecutor offered to treat himself as served on behalf of the Attorney General with notice of appeal. But I do not think it would be right, assuming that we possess the necessary jurisdiction, to award costs against the Attorney General on the ground that his deputy appeared at so late a stage. The Deputy Public Prosecutor labelled himself as respondent because we objected that there was no such person on the record. Accordingly the appellant must be content with his immunity from imprisonment. I do not think we can accord him any greater measure of satisfaction—though had the Attorney General been properly served the case would probably have been different.

DEANE, J.—This is an appeal from an order of Whitley, J., committing the Appellant to prison for one month under Section 114 (c) of the Bankruptcy Ordinance No. 44.

The grounds of appeal stated by the Appellant were as follows:—

(1) At the close of his public examination the Debtor was suddenly called upon by the learned Judge to show cause why he should not be committed to prison for having contracted debts without any reasonable expectation of being able to pay them whereas he should have been given an opportunity to consider the matter and obtain legal advice and call evidence.

(2) The charge was too wide and general and the Debtor should have been called upon to deal with specific and specified debts.

(3) The Debtor's explanations in answer to the general charge were sufficient and showed that he had reasonable expectations of being able to pay his debts in full.

(4) The public examination was not sufficiently exhaustive to show the Debtor's real financial position from year to year.

The facts which were before the Court showed that the public examination of the Debtor was commenced on the 12th September, 1924, and that the learned Judge in adjourning it to the 15th September warned the Appellant that he would probably call on him to show cause why he should not be committed to prison for having contracted debts without having any reasonable ground of expectation of being able to pay them. On 15th September the public examination was concluded and the learned Judge at once called upon him to show cause. "In doing so," he states, "I intimated that the particular debts which I had in mind were those incurred to the Indian money lenders during the period between the month of February, 1924, and the adjudication order. I referred to a list put to him in the course of the public examination by the Assistant Official Assignee and admitted in evidence as exhibit (A)."

Now it seems to me, provided that the Court had authority to proceed *ex proprio motu* in this matter, a point with which I shall deal later, that everything was done which Appellant could claim to have done. So far as he from being taken by surprise that he had been warned three days before that a charge would probably be made against him in connection with the matter, and on the 15th September his attention was directed to certain specified debts on a list and he was called upon to show cause why he should not be committed for having contracted them without any reasonable prospect of being able to pay and all that he said was heard and considered. I am of opinion on the authority of *In re Pollard*, L.R. 2. P.C. 106, and *Chang Hang Kui and others v. Sir Francis J. Piggott and another*, 1909 A.C. 312, that No. 1. ground of appeal cannot be sustained.

No. 2 ground of appeal viz:—that the charge was too wide and general and the Debtor should have been called upon to deal with specific and specified debts raises a more difficult question. As has been indicated above it is clear that the debts with regard to which the Debtor was charged were brought to his notice: his attention was directed to a number of debts appearing on a list and he was called upon to show cause with regard to these. The further question however arises, could the Debtor rightly be called upon with regard to a number of debts (25 in number) considered in the aggregate? The words of Section 114 (c) read, "at any time after the public examination of the Debtor a Judge may, if he thinks fit, order the Bankrupt to undergo imprisonment of either description for a term which may be extended to three months if it appears to him that the bankrupt (a).....(b)..... (c) has contracted any debt provable in Bankruptcy without having any reasonable ground of expectation of being able to pay it, or (d)....."

The section strictly speaking seems to contemplate that the charge against the Debtor shall be with respect to one debt, and is in accordance with the principle that a man should be called upon to answer only one charge at a time in order that he may not be embarrassed in his defence. This principle is embodied in the Criminal Procedure Code s. 169 which lays down that "For every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately except in the cases mentioned in Sections 170, 171, 172 and 175."

The rule therefore is statutory and can only be departed from in the instances mentioned in the Ordinance. The facts in this case do not fall within any of these exceptions: in my opinion the circumstances under which each particular debt was contracted had to be considered and the guilt or innocence of the accused arrived at with reference to that particular debt, and it was wrong to lump all the debts together and call upon accused to show cause with respect to all of them. The objection urged against this was that it would be almost impossible ever to convict the accused under such circumstances since by taking one debt at a time he could always show that he had reasonable expectation of being able to pay that debt, whatever might be the cause with regard to other debts. Now this argument does not seem to me to be a good one: in the first place if it were true that it would be almost impossible under such circumstances to obtain a conviction, that would be no reason for departing from the general principle of law: the accused would be entitled to avail himself of the difficulties of the prosecution; in the next place I do not agree with the view that so to hold would be to place exaggerated difficulties in the way of conviction: the tribunal dealing with the matter would in my opinion be entitled to take into consideration the general financial position of the Debtor as evidenced by his other debts at the time he contracted a particular debt, in arriving at a conclusion as to whether he had reasonable expectation of being able to repay it and that is really all that they should be considered for—while to charge the Debtor with regard to large number at once each of which might be the subject of a separate charge and with regard to each of which he has to account—seems to me totally unjustifiable.

For these reasons I think that this Appeal should be upheld.

While therefore I agree with my learned brothers that this appeal should be upheld, I do so on grounds totally different from those on which they rely: which as I understand them are that the Court under Section 114(c) had no power *ex proprio motu* to call upon the Debtor and sentence him to imprisonment.

I consider it necessary therefore inasmuch as important principles are involved that I should state my views on this question, since if I were silent it might be thought that I did not dissent therefrom.

In the first place it seems to me that the meaning of the words "At any time after the public examination of the debtor a Judge may, if he think fit order the Bankrupt to undergo imprisonment.....if it appears to him that the Bankrupt has contracted &c: &c:" is perfectly clear, and that by them an absolute discretion is conferred upon a Judge to sentence to imprisonment any debtor if it appears to him that he has committed the offence specified in the Section.

S. S. Reports, Vol: XII p. 16. the then Chief Justice discussing in Bankruptcy 23 of 1901 the meaning of section 107A of the existing Bankruptcy Ordinance which is identical in terms with section 114(c) of the present Ordinance is reported to have said "It would seem that it is not strictly necessary in order to vest in the Judge the power of imposing on the Bankrupt the appropriate punishment that there should be even an application on the part of the Official Assignee or of the petitioning or other creditor, but that the Judge may *ex proprio motu* order the Bankrupt to be imprisoned on its appearing from public examination or otherwise that he has so acted as to bring himself within the meaning of the section.

"I do not wish it to be taken that in my opinion such a course as the above would be desirable, but I draw attention to the fact as showing that the legislature probably had in its mind a class of cases (unfortunately too common here as elsewhere) not sufficiently grave perhaps to demand all the formality and delay of a trial by Jury and a lengthened period of imprisonment, but sufficiently grave to call for some punishment more immediate and exemplary than would be involved in the mere refusal or qualification of order of discharge."

Again in the cases of *Re Khoo Seok Wan* and *Re Sarkies and Johannes; ex parte the Official Assignee* (11 S.S. Reports p. 19.) the question of the meaning of Section 107A was before the Appeal Court and a full bench consisting of Hyndman-Jones, C. J. and Fisher and Braddell JJ. unanimously laid it down that "A Judge sitting in Bankruptcy may act *ex proprio motu*" (*vide* head note) under Section 107A. It is true that in these cases the matter immediately brought before the Court by way of Appeal was whether the Official Assignee could move the Court under the Section, but the Court in determining this question discussed exhaustively the meaning and effect of the Section and held as stated,—so that it seems impossible to describe these *dicta* as being merely *obiter*. The learned C. J. referred to his judgement in Bankruptcy 23 of 1901 which has been quoted above and declared "What I said then I still think," Fisher, J. stated, "I think that the meaning of the section from the words 'if it appears to him' and from the enumeration of the acts and offences is that as soon as an examination is concluded the Judge may act on his own motion." While Braddell, J. stated, "I entertain I must confess some doubt as to whether this section was intended to be acted upon in any other way than by the Judge acting *ex proprio motu* at the conclusion of the public examination."

All the Judges of a former Court of Appeal therefore in a considered judgment as to the effects of this section have in terms decided that a Judge may act '*ex proprio motu*' to enforce its provisions and to my mind that ought to conclude the matter.

The Appellant's counsel indeed did not put it forward as one of his grounds of Appeal and stated when the point was raised by the learned C. J. that he understood that it had been settled against him in *Re Sarkies and Johannes*. It seems to me that it is of most vital importance that when the law has been clearly laid down by the Court of Appeal it should remain undisturbed except by legislation: otherwise it will always be a matter of uncertainty what the law is. The inferior Courts will hesitate to act on decisions which may be upset by subsequent Courts of Appeal and the public will not know what their rights are. Indeed I fail to see the use or advantage of going to the expense of producing local reports if their authority is to be disregarded.

The fact that there is nothing corresponding to this legislation in England does not seem to me to be relevant to the discussion. If the local legislature acting in the undoubted exercise of its powers has seen fit to confer this power on the Judges then it should be exercised. With the utmost respect too, it seems to me, that to argue that because the words 'a Judge' are used instead of 'the Judge' the legislation could not have contemplated that the Judge should act *ex proprio motu* since only the Judge who sat on the examination would be qualified, involves a non sequitur. It is true as Braddell, J. says that "dealing with the case where a Judge acts of his own motion, it seems to me that only the Judge who heard the public examination would act under Section 107A. I can hardly conceive a Judge acting on his own motion in such a case without himself hearing the public examination of the debtor" but that is a vastly different thing from saying that because another Judge may act on motion therefore the Judge who has heard the public examination cannot act *ex proprio motu*.

In this case no such question arises. The Judge who heard the examination acted and in my opinion not only was he empowered to do so in express terms by the section of the Ordinance but his right to do so had been clearly laid down by the Court of Appeal.

Appeal allowed.

Solicitor for the Appellant—*Wright Motion.*

[ORIGINAL CIVIL JURISDICTION]
DEANE, J.
October 4, 1927.

WEE KAH KIAT vs. THE MUNICIPAL COMMISSIONERS OF SINGAPORE.

[SINGAPORE CIVIL SUIT No. 713 of 1926]

Ordinance No. 135 (Municipal) S 204 (5) —claim for compensation for refusal to renew licence.

The discretion of the Municipal Commissioners to grant or refuse licenses under Section 204(1) of Ordinance No. 135 (Municipal) is absolute.

A renewal of a licence is equivalent to a grant of fresh licence.

If the Municipal Commissioners of Singapore refuse to renew a licence to carry on a rubber treating factory at the end of the year or other period for which it is given, the licensee is not entitled to claim compensation under S.204(5) of Ordinance No. 135 (Municipal) for any loss which he may sustain thereby.

Trial of action before Deane, J.

The Municipal Commissioners of Singapore issued to Wee Kah Kiat a licence to work a rubber treating factory near Alexandra Road. By the actual terms of the licence any breach of the terms endorsed thereon rendered the licence liable to revocation without notice. The licence was renewed annually. On the 23rd December 1925 the Commissioners sent to the licensee an intimation that his licence which would expire on 31st December 1925 would not be renewed. The licensee applied for an extension of time and was given extensions up to the 31st July, 1926 when he had to shut down the factory. The licence was in form an annual licence.

The Plaintiff brought proceedings by Writ of Summons against the Defendants claiming a declaration that he was entitled to compensation under section 204 subsection 5 of Ordinance 135 (Municipal) in respect of the determination of his licence and to have such compensation assessed.

Everitt (*Seth* with him) for Plaintiff:—

This factory was erected in an area which was not prohibited for offensive trade. Under section 205 of the Municipal Ordinance the trade is a necessary trade and therefore allowed under licence under section 204 of that Ordinance. The refusal to re-grant the licence is equivalent to a revocation of the licence. The legislature must have intended that compensation should be given for termination of a licence unless the licence was determined by reason of some misconduct on the the part of the licensee such as breach of conditions of the licence.

F. G. Stevens (*K. K. O'Connor* with him) for Defendants:—

The Municipal Commissioners have absolute discretion whether they will or will not grant the licence from year to year. Renewal of a licence